Reg. No. GR/RNP/GOA/32

RNI No. GOAENG/2002/6410

Panaji, 22nd March, 2008 (Chaitra 2, 1930)

SERIES II No. 51

OFFICIAL GAZETTE

GOVERNMENT OF GOA

SUPPLEMENT

GOVERNMENT OF GOA

Department of Labour

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Notification

No. 28/18/2007-LAB/1178

The following Award passed by the Industrial Tribunal of Goa at Panaji-Goa on 26-10-2007 in reference No. IT/2/2007 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Hanumant T. Toraskar, Under Secretary (Labour).

Porvorim, 14th November, 2007.

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IN THE INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I AT PANAJI

(Before Dilip K. Gaikwad, Presiding Officer)

Case No. IT/2/2007

The Goa Shipyard Storekeepers Association, Vasco-da-Gama, Goa.

1. Vishwas D. Honavarkar.
2. Anant V. S. Salelkar.
3. Anselmo Pereira.
4. Santosh B. Dhargalkar.
5. Savlo N. Madgaokar.
6. Ashok A. Bhatkal.
7. Satpal Singh.
8. Lawoo P. Bhagat.
9. Suresh Sawaikar.
10. Mohan P. Gosavi.
11. Shivaji T. Bichkar.
12. Arvind Rao.
13. Pundalik Bhosle.
14. Fermino Fernandes.
15. Vijaykumar C. T.
16. Vilas Bandekar.
17. Harisingh Meena.
18. Anil Gaad.
19. A. M. Iyer.

Workmen represented by Goa Shipyard Stores Staff Association, A registered association, having its office at H. No. 203, Sharon Enclave, Vaddem, Vasco-da-Gama, through its Secretary, Vishwas D. Honavarkar, Resident of Vaddem, Vasco-da-Gama, Goa. —Workmen Party I

V/s

M/s. Goa Shipyard Limited, Vasco-da-Gama, Goa. — Employer/Party II

Goa Shipyard Limited a Govt. of India Undertaking, registered under the Companies Act, 1956 through its Chairman and Managing Director having its office at Vaddem, Vasco-da-Gama, Goa. — Employer/Party II

Party I is represented by Adv. V. A. Lawande.

Party II is represented by Adv. P. J. Kamat.

AWARD

(Passed on this 26th day of October, 2007)

This is a reference under Section 10(1)(d) of the Industrial Disputes Act, 1947 (hereinafter in short referred to as the said Act, 1947)

1. Generally Speaking, dispute between employees and employer inter se, especially when it relates to monetary benefits, always remained subject of legal battle before Industrial Tribunal or Labour Court. The dispute under the present reference and which is also of the same nature arose out of facts, stated in narrow compass, as follows:

The Government of Goa in exercise of powers conferred on it by Section 10(1)(d) of the said Act, 1947,

under order dated 6-10-2006 has referred to this Industrial Tribunal following dispute for adjudication:

(a) Whether the acceptance of the benefits of settlement dated 06-09-2002, bars the workmen represented by the Goa Shipyard Storekeepers Association, Vasco-da-Gama, from receiving benefits under Justice Mohan Committee Report with effect from 01-04-1998 ?

(b) Whether the workmen who are storekeepers are discriminated in the matter of extension of benefits of the Justice Mohan Committee Report ?

(2) If the answer, to (a) above is in the negative and the answer to (b) above is in the affirmative then, to what relief the workmen are entitled?

2. Both parties to the reference in response to notices, put their appearance before this Industrial Tribunal. Party I/Association who is representing its 19 members, presented its claim statement which runs into 41 typed pages, on 13-6-2007 at Exb. 4. It appears from claim statement that the Party II which is a Government of India undertaking is a public limited company established under the Indian Companies Act, 1956. The members, 19 in number, represented by the Party I which is registered Association under the Societies Registration Act, 1860, are working as storekeepers Grade I (hereinafter in short referred to as the said employees) in establishment of the Party II.

3. The Government of India had constituted Justice Mohan Pay Committee (the said Committee) in order to bring parity in pay structures and uniformity in pay scales in public sectors. The said committee accordingly submitted its report whereunder it recommended revision of pay scales to non-unionized supervisory staff. Pay scales recommended by the said committee and which are relevant for the present reference are the pay scales of Rs. 6000-160-9200(S3), Rs. 5300-150-8600(S2) and of Rs. 5200-140-8000(S1).

4. After the said committee submitted its report, memorandum of settlement as per provisions contained in Section 2(p) read with Section 18(1) of the Industrial Disputes Act, 1947 was entered into by and between representatives of the Party II on one hand and representatives of Shipyard Employees Union-Goa (in short the Shipyard Union) on the other, on 6-9-2002. The said employees represented by the Party I/ /Association accepted this memorandum of settlement dated 6-9-2002 in their individual capacity and not as members of the Shipyard Union.

5. Technical Staff working in establishment of the Party II had filed Writ Petition No. 272/2002 in the Hon'ble High Court of Bombay at Goa for getting benefits of pay scales S1, S2 and S3 recommended by the said committee. There was reference bearing No. IT/67/2003 in this Industrial Tribunal at the instance of Administrative staff of Party II. It was stand of the Party II in the Writ Petition No. 272/2002 as well as in the reference bearing No. IT/67/2003 that these employees are not supervisors, and that, the revision in pay scale extended to non-unionized supervisory staff cannot be extended to them. Inspite of that, the Party II extended benefits of new pay scales S3 to the employees who were getting pay scale of Rs. 2725-70--3075-80-3895, of new pay scale S2 to the employees who were getting pay scale of Rs. 2630-55-2905-70-3605 and of new pay scale S1 to the employees who were getting pay scale of Rs. 2570-50-2820-60-3420 and who were working in Technical and Administrative sections, under orders dated 26-6-2003 and dated 2-4-2005 respectively. These three old pay scales were the revised pay scales at Sr. Nos. 9, 8, 7 respectively, under wage settlement dated 18-4-1994 which was covering all categories of employees to whom the Certified Standing Orders of the Party II were applicable.

6. The said employees by making representations on 13-11-2003, 18-3-2005 and lastly on 15-5-2005 placed demand before management of the Party II, to review their pay scales and to extend to them benefit of S1, S2 and S3 pay scales on par of the Technical Staff and Administrative Staff. Management of the Party II under its letter dated 12-7-2005 turned down their representations on the ground that they have accepted settlement dated 6-9-2002 and that they are not entitled to get S1, S2 and S3 pay scales during validity period of this settlement. According to them, recommendations made by the said committee under its report have got statutory force. Such recommendations prevail over the settlement dated 6-9-2002 which is accepted by them. The settlement dated 6-9-2002 is purely in the realm of private contract. The benefits which are available under report of the said committee are more than those which they have received under the settlement dated 6-9-2002. Acceptance of benefits under settlement dated 6-9-2002 does not bar them from receiving benefits available under the report of the said committee. There was historical parity in pay scales between technical staff, administrative staff and staff working in store section. The Party II by refusing to extend benefits of S1, S2 and S3 pay scales has discriminated them in the matter of extension of benefits available under report of the said committee. Therefore, they filed Writ Petition bearing No. 481/2006 in the Hon'ble High Court of Bombay at Goa. It is held by the Hon'ble High Court under order dated 6-6-2006 passed in this Writ Petition that the disputes whether the members of the petitioner Association who are storekeepers are discriminated in the matter of extension of benefits of the Justice Mohan Committee Report and whether the acceptance of settlement dated 6-9-2002 bars the members of petitioner Association from receiving the benefits under Justice Mohan Committee Report with effect from 1-4-1998, can be adjudicated and resolved by the Industrial Tribunal in reference under Section 10 of the Industrial Disputes Act, 1947. In pursuance of directions given by the Hon'ble High Court, the Party I/Association raised dispute on 25-7-2006 which came to be referred

by the Government of Goa under its order dated 6-10-2006 to this Industrial Tribunal for adjudication as stated earlier.

7. The Party I employees by presenting the claim statement prayed for direction to the Party II to extend to them S2 pay scale of Rs. 5600-150-8600 and S3 pay scale Rs. 6000-160-9200 given to supervisors and to technical and administrative staff, together with other benefits including arrears of wages as per recommendations of the said committee and of settlements entered into by the Party II with supervisors and with technical and administrative staff with effect from 1-4-1998.

8. The Party II filed its written statement on 4-7-2007 at Exb. 7 and thereby combated claim made out by the Party I employees. According to the Party II, the said employees represented by the Party I/Association have accepted settlement dated 6-9-2002 which has taken place with its workmen represented by the Shipyard Union. In view of clause No. 14.4 included in the settlement the Party I employees are estopped from claiming or raising any demand involving additional financial expenditure/implication. The dispute which is raised by 19 workmen out of 1056, is not raised by Union or by a substantive number of workmen working in its establishment and as such the dispute under the reference is not Industrial Dispute within meaning of Section 2(k) of the said Act, 1947. The Party I/Association is not a Trade Union within meaning of the Trade Union Act, 1926. As a result, the Party I/Association is incompetent to raise or to make any demand for and on behalf of the said employees. Recommendations made by the said committee, on acceptance by the Government of India, are applicable to executives at Board level, below Board level and to non-unionized supervisory staff. The Party I employees are workmen as defined under the said Act, 1947. They cannot claim benefit under report submitted by the said Committee. Therefore, according to it, the reference is not maintainable.

9. Further, it appears from written statement that the Party II is a Shipyard dealing with business of ship-building and ship-repairs. There are large numbers of employees in establishment of the Party II. Before implementation of report submitted by the said committee and in relation to pay scales to non-unionized supervisory staff, employees working in establishment of the Party II were classified in seven categories as stated in para No. 3 of the written statement. The classification was based on qualification, entry level, promotional avenues, pay scales and job specifications as per recruitment and promotion policy. There were two structures of pay scales viz. one for Industrial workmen and another for office and subordinate staff. The Industrial workmen were getting pay scales of Sr. Nos. 1 to 9, while office and subordinate staff were getting pay scales of Sr. Nos. 10 to 14 of which particulars are stated in para No. 5 of the written statement as follows:

Previous pay scales per	Revised pay scales as 1994 settlement
1	2
I Industrial Workmen	
1. 1300-20-1400-22-1620	2300-24-2420-26-2680.
2. 1325-20-1425-24-1665	2325-24-2445-28-2725.
3. 1350-24-1470-28-1750	2350-28-2490-32-2810.
4. 1430-26-1560-30-1860	2430-30-2580-34-2920.
5. 1450-35-1625-40-4025	2450-40-2650-45-3100.
6. 1510-40-1710-45-2160	2510-45-2735-50-3235.
7. 1570-45-1795-55-2530	2570-50-2820-60-3420.
8. 1630-50-1880-65-2530	2630-55-2905-70-3605.
9. 1725-65-2050-75-2800	2725-70-3075-80-3875.
II Office & Sub-Ordinatte Staff	
10. 1325-20-1425-24-1665	2325-24-2445-28-2725.
11. 1400-24-1520-28-1660--30-1835-40-2035	2400-28-2540-32-2700--40-2900-45-3125.
12. 1450-30-1600-35-2725--40-1975-45-2290	2450-35-2625-40-2825--45-3050-50-3300.
13. 1630-55-1905-65-2555	2630-60-2930-70-3030.
14. 1700-65-2350-75-2800	2700-70-3400-80-3800.

10. The storekeepers are placed under Class III (c). Their pay scale and promotion avenues were not given to any other class of employees at the time of entry level. Employees coming under Class III were reaching to pay scale of serial Nos. 8 and 9 after period of 13 years and of 17 years of service in that category subject to fulfillment of eligibility criteria set out in Recruitment and Promotion Policy. Employees working in Planning and Design Section and Yard Supervisors are getting identical pay scales at entry level as well as after service of two years and of five years. There is no parity of pay scales of storekeepers at entry level. Parity of pay scales betweenstore keepers and employees working in Planning and Design Section and Yard Supervisors arises only on account of promotional avenues available to storekeepers as per Recruitment and Promotion Rules in force. Party I employees are not enjoying similar benefits especially pay scales in comparison to employees working in Planning and Design Section, Yard Supervisor, administrative class and as such they cannot claim equality in pay scales which the employees working in Planning and Design Section, Yard Supervisor and Administrative Staff are getting. There was settlement on 27-1-1994 between the Party II on one hand, and the Shipyard Union on the other, under Section 12(3) read with Section 18(3) of the said Act, 1947. By this settlement the then prevailing pay scales came to be revised for Assistant Storekeepers at Rs. 2350-28-2490-32-2810 with effect from 1-4-1993. This revision of pay scale was for the period from 1-4-1993 till 31-3-1998. The Party I employees were members of the Shipyard Union at that time. They had accepted terms and conditions of settlement dated 27-1-1994 in toto. Pay scales which came to be revised for Assistant Storekeepers were different from those which were

made applicable to the Yard Supervisors and employees working in Planning and Design Section under the Settlement dated 27-1-1994. There is also difference in qualification for Assistant Storekeepers on one hand, and for Yard Supervisors and employees working in Planning and Design Section at entry level. Duties of the storekeepers, and of Yard Supervisor, Design and Planning Staff and Administrative Staff are different from each other. Ministry of defence recommended to make applicable supervisory pay scales prescribed under report of the said committee, to the non-unionized supervisory class of employees. Considering all these aspects, pay scale of Yard Supervisors, Design and Planning Staff and of Administrative and Ministerial Staff came to be revised to S1, S2 and S3 pay scale made applicable to the non-unionized supervisory staff under the report of the said committee. In pursuance of option exercised by the Yard Supervisors, Design and Planning Staff and Administrative Staff and on their submitting irrevocable undertakings declaring themselves to be non-unionized Supervisors, the Party II made applicable S1, S2 and S3 pay scales to them with effect from 1-4-1998. While making these pay scales applicable their designations are also revised. They had not accepted the settlement dated 6-9-2002. The Party I employees are not discriminated by the Party II in the matter of extension of benefits of pay scales recommended under the report of the said committee. The Party I employees are not from non-unionized supervisory category. They are not entitled to claim parity in the pay scales made applicable to the non-unionized supervisors as per recommendations of the said committee. On these and the above grounds the Party II entreated for rejection of the reference with cost.

11. The Party I employees submitted rejoinder on 23-3-2007 at Exb. 10. By presenting the rejoinder the said employees have re-affirmed all averments which are made in claim statement (Exb. 4). They have further denied in the rejoinder all contentions which are raised by Party II in written statement and which are adverse to their interest. It is needless to reiterate the denials.

12. On basis of pleadings of both parties, I framed issues on 25-7-2007 at Exb. 12 The issues are as follows:-

1. Whether the Goa Shipyard Storekeepers Association, Vasco-da-Gama, Goa is competent to raise dispute for and on behalf of the workmen?
2. Whether the dispute raised by the said Association is the industrial dispute within meaning of Section 2(k) of the Industrial Disputes Act, 1947?
3. Whether the acceptance of benefits of settlement dated 6-9-2002 bars the workmen represented by the Goa Shipyard Storekeepers Association, Vasco-da-Gama, from receiving benefits under the Justice Mohan Committee Report w.e.f. 1-4-1998?
4. Whether the workmen who are storekeepers are discriminated in the matter of extension of benefits of the Justice Mohan Committee Report?
5. Whether the workmen are entitled to the reliefs as prayed for?
6. What Award?

13. My findings on the above issues are as follows:-

Issue No. 1:	In the affirmative.
Issue No. 2:	In the affirmative.
Issue No. 3:	In the affirmative, but only during the validity period of the settlement i.e. till 31-12-2006.
Issue No. 4:	In the negative.
Issue No. 5:	Entitled to benefits of S2 and S3 pay scales with consequential benefits.
Issue No. 6:	As per final order.

REASONS

14. *Issue No. 1:* The Party II in para No. 2 of its written statement (Exb. 7) raised specific plea that the Party I/Association is not a Trade Union within the meaning of the Trade Unions Act, 1926 and therefore, the Party I/Association is incompetent to raise or to make any demand for and on behalf of the said employees.

15. Relevant portion of Section 36 of the said Act, 1947 lays down that–

"(1) A workman who is a party to a dispute shall be entitled to be represented in any proceeding under this Act by–

(a) [any member of the executive or other office bearer] of a registered trade union of which he is a member;

(b) [any member of the executive or other office bearer] of a federation of trade unions to which the trade union referred to in clause (a) is affiliated;

(c) where the worker is not a member of any trade union, by [any member of the executive or other office bearer] of any trade union connected with, or by any other workman employed, in the industry in which the worker is employed and authorized in such manner as may be prescribed.

(2) An employer who is a party to a dispute shall be entitled to be represented in any proceeding under this Act by-

(a) an officer of an association of employers of which he is a member;

(b) an officer of a federation of associations of employers to which the association referred to in clause (a) is affiliated;

(c) where the employer is not a member of any association of employers, by an officer of any association of employers connected with, or by any other employer engaged in, the industry in which the employer is engaged and authorized in such manner as may be prescribed.

16. Learned advocate of Party I argued that the Party I is Association duly registered under the Societies Registration Act, 1860. It is not that only registered Trade Union is competent to raise dispute for or on behalf of workmen. The said employees are members of the Party I/Association. Therefore, according to him the Party I Association is competent to raise dispute for and on behalf of the said employees/workmen. To substantiate his argument he relied upon decision given by the Hon'ble Supreme Court in case of *Newspapers Limited Allahabad Appellant v/s U. P. State Industrial Tribunal and Others, Respondents, reported in AIR 1960 Supreme Court 1328.* The Hon'ble Supreme Court held in this reported case that cause of workmen can be taken up by unregistered association of workmen.

17. Learned advocate of Party II argued that the Party I/Association is not a trade union under the Trade Unions Act, 1926. As per provision contained in Section 14, the said Act of 1926 is not applicable to the Societies Registration Act, 1860. Therefore, in his opinion, the Party I which is association is not competent to raise dispute for and on behalf of the said employees. He relied upon decision given by the Hon'ble High Court of Judicature at Bombay in case of *National Organization of Bank Worker's Federation of Trade Unions, Appellant v/s Union of India and others, Respondents, reported in 1993 I C.L.R. 995.* The Hon'ble High Court of Judicature at Bombay held in this reported case that unregistered Federation of Trade Unions is not a Trade Union within the meaning of Section 2(h) of the Trade Unions Act and therefore, not a juristic person and hence incompetent to file Writ Petition.

18. Learned advocate of the Party I in answer to argument advanced by learned advocate of Party II further pointed out that even unregistered association can espouse cause for and on behalf of the workmen. Therefore, according to him, argument advanced by learned advocate of the Party II does not hold water and as such it should be turned down. He relied upon decision given by the Hon'ble Supreme Court in case of *State of Bihar, Appellant v/s Kripa Shankar Jaiswal, Respondent, reported in AIR 1961 Supreme Court 304.* The Hon'ble Supreme Court held in this case that it is not requisite condition that the Industrial Dispute should be sponsored by a registered union, and that, a dispute becomes an Industrial Dispute even where it is sponsored by the Union which is not registered.

19. In the present case, the dispute is raised for and on behalf of the said employees by their Association. It is specifically pleaded in para No. 1 of claim statement that the Party I is an Association duly registered under the Societies Registration Act, 1860. This fact is not specifically or even impliedly denied by the Party II in its written statement. The fact which is not specifically or impliedly denied can be taken as admitted. The Party I/Association is not Trade Union within meaning of Section 2(h) of the Trade Unions Act, 1926. It follows that the dispute which is raised on behalf of the said employees is not by the Trade Union. Therefore, it is not necessary and it is immaterial to go into question as to whether the dispute raised on behalf of the said employees is by registered or unregistered Trade Union. With respect I am of the opinion that decisions relied upon by learned advocates from reported cases of *National Organization of Bank Workers Federation of Trade Unions,* and of *State of Bihar* referred to above are not applicable to the present case.

20. Section 36 of the said Act, 1947 and which is quoted above does not show that dispute can be raised for and behalf of employees by their Association. It appears from para No. 3 of Judgment delivered by the Hon'ble Supreme Court in case of *Newspapers Limited, Allahabad,* alluded supra, that there was an Association known as Leader Press Karmachari Sangh, and that, the cause of Respondents No. 3 to 5 who were employees of the appellant had been sponsored by the said Association. Relying upon decision given by the Hon'ble Supreme Court in this reported case it can safely be said that the Association of the employees is competent to raise dispute on their behalf. I, therefore, agree with argument advanced by learned advocate of the Party I. My answer to the issue is in affirmative.

21. *Issue No. 2:* The Party II in para No. 2 of its written statement raised plea that the dispute is not raised by the Trade Union or by a substantive number of workmen working in its establishment and as such the dispute under the reference is not industrial dispute as defined under Section 2(k) of the said Act, 1947.

Section 2(k) of the said Act, 1947 lays down that–

"industrial dispute" means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person.

22. Learned advocate of the Party I argued that the Party I had instituted Writ Petition bearing No. 481/2005 against the Party II in the Hon'ble High Court of Bombay at Goa. It was main prayer of the Party I in the Writ Petition that the Party II be directed to extend benefits of S1, S2 and S3 pay scales to the Party I employees. The Party II did not plead in reply to the Writ Petition that the dispute raised on behalf of the Party I employees was not by registered Trade Union or by substantive number of workmen working in establishment of the Party II. By raising such plea in written statement the

Party II is trying to expand scope of the reference which is not permissible. Therefore, according to him, the plea raised by the Party II in para No. 2 of its written statement and which is stated above should not be taken into consideration. In support of his argument he relied upon decision given by the Hon'ble Supreme Court in case of *National Engineering Industries Limited, appellant v/s State of Rajasthan and others, Respondents reported in (2000) I Supreme Court Cases 371,* by the Hon'ble High Court of Delhi in case of *M/s. India Tourism Development Corporation New Delhi, petitioner v/s Delhi Administration, Delhi and others, Respondents, reported in 1982 LAB. I.C. 1309* and by the Hon'ble Supreme Court in case *between Delhi Cloth and General Mills Company, Limited and their workmen and others reported in 1967 I L.L.J. (SC) 423.*

23. The Hon'ble Supreme Court held in case of *National Engineering Industries Limited* that the Industrial Tribunal cannot examine validity of the reference. In the present case the Party II has challenged maintainability and not validity of the reference. This Industrial Tribunal is not going to examine validity of the reference. Therefore with respect I am of the opinion that decision relied upon by the learned advocate of the Party I from the reported case of *National Engineering Industries Limited* is not applicable to the present case.

24. The Hon'ble High Court of Delhi observed in para No. 32 of Judgment delivered in the reported case of *M/s. India Tourism Development Corporation New Delhi* that-

> *"An industrial Adjudicator constituted under the Act is not vested with any inherent power of jurisdiction. It exercises such jurisdiction and power only upon and under order of reference limited to its terms. It cannot travel beyond the terms of reference except for ancillary matters''.*

25. The Hon'ble Supreme Court held in case of *Delhi Cloth and General Mills Company, Limited* that–

> *"while it is open to the appropriate Government to refer the dispute or any matter connected therewith for adjudication, the tribunal must confine its adjudication to the points of dispute referred to and matters incidental thereto. In other words the tribunal is not free to enlarge the scope of the dispute referred to it but must confine its attention to the points specifically mentioned and anything which is incidental thereto."*

26. Relying upon decisions given by the Hon'ble High Court of Delhi in case of *M/s. India Tourism Development Corporation, New Delhi reported in 1982 LAB, I. C. 1309* and by the Hon'ble Supreme Court in case of *Delhi Cloth and General Mills Company Limited reported in 1967 I L.L.J (SC) 423,* I am in full agreement with argument advanced by learned advocate of the Party I that the Industrial Tribunal cannot widen the scope of the terms of the reference. However, it should be remembered that the Industrial Court can certainly deal with ancillary matters while deciding the reference. In my view dealing with the ancillary matters will not amount in widening scope of terms of the settlement. At this juncture it will be useful to have reference of decision given by the Hon'ble High Court of Bombay in case *between Iqbal Ahmed Kamaruddin and P. L. Majumdar and another, reported in 1992 (64) F.L.R. 827* and which is placed before me by learned advocate of Party II. The Hon'ble High Court of Bombay held in this reported case that–

> *"If what is referred to Tribunal/Labour Court is not an Industrial Dispute it is always open to a party to show to the forum that the dispute referred for adjudication though purported to be an Industrial Dispute, is in reality not an Industrial Dispute at all. This has always been recognised as an exception to the general rule postulated in Section 10(4). It is, therefore, always permissible for an employer to raise an issue as to whether what has been referred is an Industrial Dispute at all and there can be no question of the tribunal being bound by the order of reference. It is settled law that the appropriate Government makes a reference upon a prima facie view of the matter as to the existence or apprehension of an Industrial Dispute, it is open to the parties to show that what is referred is not in reality an Industrial Dispute at all."*

27. Relying upon above decision from the case of *Iqbal Ahmed Kamruddin* I hold that it is permissible for the Party II/Employer to plead before the Industrial Tribunal that the dispute referred for adjudication, though purported to be an industrial dispute, is not an Industrial Dispute at all. Plea raised by the Party II in its written statement that the dispute raised on behalf of the said employees of the Party I/Association is not by registered trade Union or by a substantive number of workmen working in its establishment and therefore there is no Industrial Dispute as defined under 2(k) of the said Act, 1947, is the ancillary matter which requires to be dealt with while deciding the terms of reference. I, therefore, do not agree with submission made by learned advocate of the Party I that the plea raised by the Party II in para No. 2 of its written statement and which is stated earlier should not be taken into consideration.

28. Learned advocate of the Party II to prove that the dispute under the reference is not Industrial Dispute within the meaning of Section 2(k) of the said Act, 1947 relied upon decisions given by the Hon'ble High Court of Judicature at Bombay in case of *National Organization of Bank Workers Federation of Trade Unions reported in 1993 I CLR.* The Hon'ble High Court of Judicature at Bombay held in his case that, the unregistered Trade Union is not Trade Union within the meaning of the Industrial Disputes Act, 1947, that such union is incompetent to raise or to make any demand for and on behalf of the employees so as to fail within the scope and ambit of the Industrial

Dispute as defined under Section 2(k) of the Industrial Disputes Act, 1947.

29. As already stated in the present case dispute on behalf of the said employees is raised by their Association which is registered under the Societies Registration Act, 1860. It is not the trade union as defined under Section 2(h) of the said Act, 1947. The Party I/Association is competent to raise the dispute for and behalf of its employees. In view of these distinguishable facts, with respect, I am of the opinion that decision from the reported case of *National Organization of Bank Workers Federation of Trade Unions* has no application to the present case.

30. One more submission which is pressed into service by learned advocate of the Party II is that there are more than one thousand workmen in establishment of the Party II. The dispute under present reference is raised by the Party I/Association and its employees who are nineteen in number. The dispute is not raised by an appreciable or substantial body of workmen. Therefore, according to him, the dispute under the present reference does not constitute the dispute an industrial dispute. In support of his submission he relied upon decision given by the Hon'ble Supreme Court in case between *the State of Punjab and the Gondhara Transport Company (P) Limited, reported in SCLJ 1950-77 Vol. II 277.* The Hon'ble Supreme Court held in this reported case that–

> "*Where only five out of sixty that is 1/12th of the employees in the establishment of the management has espoused the cause of the dismissed workmen. Such an espousal, in our opinion, cannot be considered to be by an appreciable or substantial body of workmen so as to constitute the dispute an Industrial Dispute.*"

31. The said employees who are nineteen in number represented by the Party I/Association cannot be said to be an appreciable or substantial body of workmen so as to constitute the dispute an industrial dispute if the total figure of workmen who are more than one thousand is taken into consideration. However, what is apparent from this, is not a real state of thing. The Party II in para No. 20 of affidavit in reply (Exb. 153) filed in the Writ Petition No. 481/2005 stated that members of the petitioner that is of the Party I/Association are a class by itself. Therefore, while deciding as to whether the dispute is raised by an appreciable or substantial body of workmen, only the class of the members of the Party I/Association will have to be taken into consideration. The Party I/Association has raised the dispute on behalf of all its members that is the said employees. All of them have signed the claim statement. In other words, the dispute is raised by the Party I/ /Association as well as by all its members. It cannot be said that the dispute raised under the present reference is not by appreciable or by substantial body of workmen. I, therefore, do not agree with argument advanced be learned advocate of the Party II in this regard.

32. The said employees represented by the Party I/ /Association are employees of the Party II. It follows that there is emergence of employee and employer relationship between the Party I employees and the Party II. The dispute which is connected with employment of the said employees, is raised by the Party I/Association as well as by its all members who are workmen that is the storekeepers in establishment of the Party II. In view of this position, above discussion and of finding given to the issue No. 1, I answer the issue in affirmative.

33. *Issue No. 3:* The Party II which is a Government of India undertaking is dealing with business of ship-building and of ship-repairs for defence and other purposes. The Government of India had appointed the said committee to examine present structure of pay, allowances pre-requisites and benefits for Central Government Public Sector executive at different levels and to make its recommendations. This fact becomes clear from xerox copies of notifications issued by the Ministry of Industry on 10-12-1996 and on 31-8-1998 (Exb. 126 and Exb. 44), respectively. Xerox copy of the report submitted by the said committee and which is admitted by learned advocate of the Party II is produced at Exb. 154. It appears from the report that the said committee recommended pay scales with other consequential benefits for executive occupying Board level and below Board level positions as well as non-unionized supervisors for uniform adoption in all Public Sector Enterprises. Board level pay scales are shown in Table 6.1 below Board level pay scales are shown in Table 6.2, while non- -unionized supervisors pay scales are shown in Table 6.3. The pay scales shown in Table 6.3 and which are recommended by the said committee for non-unionized supervisors are important and relevant for purpose of the present reference. These pay scales are as follows:

Table 6.3

Non-Unionised Supervisors Scales

Grades	Model Scales as per department of Public Enterprises effective from 1-1-92 (Rs.)	Proposed Scales effective from 1-1-97 (Rs.)
S-1	2800-90-3430-100-4830	5200-140-8000
S-2	3000-105-3735-110-5055	5600-150-8600
S-3	3200-110-3970-120-5290	6000-160-9200
S-4	3375-120-4335-140-5875	6400-180-10000

34. The Party II under its Memo No. 82 dated 30-11-2001 of which xerox copy is produced at Exb. 121, in pursuance of option exercised by the supervisors working in its establishment and of irrevocable undertaking submitted by them declaring themselves as non-unionized supervisors, approved in meeting of Board of Directors held on 23-9-2001, the pay revision and introduction of non-unionized supervisors pay scales with effect from 1-4-1998 with revised designations as follows:

Existing scales and pay codes	Existing designations	Corresponding new scales	Revised designations
Rs. 2725-70--3775-80-3875-(9)	Sr. Charge Hand	Rs. 6000-160--9200-S3	Senior Supervisor
Rs. 2630-55--2905-70-3805-(8)	Jr. Charge Hand	Rs. 5600-150--8800-S2	Supervisor
Rs. 2570-50--2820-60-3420-(7)	Leading Hand	Rs. 5200-140--8000-S1	Junior Supervisor

In addition to the above, the Party II decided to operate pay scale of Rs. 6400-180-10000 that is S4 pay scale in due course as promotional scale depending upon factors like span of service, qualification, performance and contribution etc., as may be considered relevant for granting promotion.

35. The pay scales (9), (8) and (7) which are shown in first column of the above chart are the revised pay scales against the then existing pay scales of Rs. 1725-65-2050-75-2800, of Rs. 1630-50-1880-65-2530 and Rs. 1570-45-1795-55-2345 respectively, under wage settlement dated 18-4-1994 which was valid for period from 1-4-1993 to 31-3-1998. Xerox copy of this wage settlement is at Exb. 36.

36. Representatives of the management of the Party II on one hand and of workers represented by the Shipyard Union-Goa entered into memorandum of settlement on 6-9-2002 under Section 2(p) read with Section 18(1) of the said Act, 1947 of which xerox copy is produced at Exb. 25. Present pay scales and revised pay scales are shown in para No. 3 of this memorandum of settlement. Present pay scales and revised pay scales which are at Sr. Nos. 1 to 6 are not relevant and as such the same are not required to be taken into consideration. Present pay scales of Rs. 2570-50-2820-60-3420 (Sr. No. 7) is revised at Rs. 4725-110-5275-115-5850-120-8250, present pay scale of Rs. 2630-55-2905-70-3605 (Sr. No. 8) is revised at Rs. 4875-115-5450-120-6050-125-8550, and present pay scale of Rs. 2725-70-3075-80-3895 (Sr. No. 9) is revised at Rs. 5025-125-5650-130-8900. The Party I employees have accepted this settlement (Exb. 25) individually. This fact is also admitted by the employee V. D. Honavarkar in para No. 102 of his cross examination. The said employees have individually accepted this settlement by making declarations in the name of the General Manager (Personal and Administration) of the Party II. Xerox copy of one of such declarations and which is executed by employee Santosh Dhargalkar is at Exb. 26. In other words, benefits which are available under this memorandum of settlement are individually accepted by all the said employees who are storekeepers and also who are members of Party I/Association. Acceptance of this memorandum of settlement by the said employees has given rise to the core question as to whether they are barred from receiving benefits under report of the said committee with effect 1-4-1998.

37. The Party I employees by meeting representations on 13-11-2003 and on 18-3-2005 of which xerox copies are produced at Exb. 27 and at Exb. 174 respectively, requested the Chairman and Managing Director of the Party II to extend the S1 to S3 pay scales to them at par with the Technical Staff. By submitting one more representation on 16-5-2005 they brought to notice of the Chairman and Managing Director of the Party II that there was historical parity in the pay scales of storekeepers, technical staff and administrative/ /ministerial staff. The Party II has extended benefits of S1, S2 and S3 pay scales to the technical staff and to the administrative/ministerial staff. Therefore, they requested the Chairman and Managing Director of the Party II to extend to them benefits of S1, S2 and S3 pay scales. Xerox copy of this representation is at Exb. 148.

38. The Party II did not give response to the representations dated 13-11-2003 (Exb. 27) and dated 18-3-2005 (Exb. 174). In response to the third representation dated 16-5-2005 (Exb. 148) the Party II informed the said employees/storekeepers that their request for grant of supervisors scale of pay in terms of Justice Mohan Committee Recommendation has been examined in depth at the highest levels of the management, and that, it has been decided that the settlement signed by them under the aegis of Shipyard Employees Union (Goa) will not be re-opened or amended or foreclosed during its period of validity that is to say till 31-12-2006. In other words, the Party II under its letter dated 12-7-2005 turned down request of the said employees /storekeepers to extend to them benefits of S1, S2 and S3 pay scales.

39. Learned advocate of the Party II argued that the memorandum of settlement dated 6-9-2002 (Exb. 25) is entered into by and between the representatives of the management of Party II on one hand and by representatives of the workers represented by the Shipyard Union-Goa on the other, as per provisions contained in Section 2 (p) read with Section 18(1) of the Industrial Disputes Act, 1947. Such settlement is binding upon the parties. Since the Party I employees have accepted this memorandum of settlement, all terms and conditions are binding upon them also. Clause 14.4 included in this memorandum of settlement makes it clear that, during the currency of this settlement the Union/Workmen agree that it/they shall not raise any demand involving additional financial expenditure/ /implications. Extension of S1, S2 and S3 pay scales recommended by the said committee will certainly put additional burden of financial expenditure upon the Party II and the same will involve additional implications also. Therefore, and in view of the clause No. 14.4 included in the memorandum of settlement, according to him, the said employees are barred from receiving benefits under the report of the said committee. He relied upon decision given by the Hon'ble Supreme Court in case of *Barauni Refinery Pragatisheel Shramik Parishad, petitioners v/s Indian Oil Corporation Ltd., and others, respondents, reported in 1990 II CLR 217.* The

Hon'ble Supreme Court held in this reported case that the first category of settlement falling under Section 2(p) of the said Act, 1947, binds all and that the object behind it obviously is to uphold the sanctity of settlement reached with the active assistance of the conciliation officer and to discourage an individual employee or a minority union from scuttling the settlement.

40. There is no evidence to show and it is not case of any of the parties to the present reference that the memorandum of settlement date 6-9-2002 (Exb. 25) is arrived at during course of conciliation proceedings.

41. As per provision contained in Section 18(1) of the said Act, 1947 a settlement arrived at by agreement between the employer and workmen otherwise than in the course of conciliation proceeding shall be binding on the parties to the agreement. The memorandum of settlement dated 6-9-2002 (Exb. 25) is arrived at by the agreement between representatives of management of the Party II on one hand, and representatives of workers represented by the Shipyard Union-Goa on the other, otherwise than in course of conciliation proceedings. Therefore, this memorandum of the settlement falls under Section 2(p) read with Section 18(1) of the said Act, 1947. I, agree with argument advanced by learned advocate of the Party II that this memorandum of settlement dated 6-9-2002 (Exb. 25) is binding upon the parties to it and since this memorandum of settlement is accepted by the Party I employees, same is binding upon the said employees also.

42. Learned advocate of the Party I argued that the Party I employees accepted the settlement dated 6-9-2002 (Exb. 25) because the Party II had given assurance to maintain parity in pay scales of the storekeepers, technical staff and also administrative and ministerial staff. The Party II extended benefits of S1, S2 and S3 pay scales to the technical staff and administrative/ministerial staff under Memo No. 41 dated 26-6-2003 (Exb. 122) and under Memo No. 31 dated 2-4-2005 (Exb. 149) respectively. Such benefits are not given to the Party I employees. Thus the Party II committed breach of assurance given to the Party I employees at the time of acceptance of settlement dated 6-9-2002 (Exb. 25). Under these circumstances, according to him, the Party II is estopped from saying that the Party I employees are not entitled to benefits under report of the said committee. So far estoppel is concerned he relied upon decision given by the Hon'ble High Court of Calcutta in case between *Bidyut Kumar Chatterjee and others, and Commissioners for the Port of Calcutta, reported in 1972 II LLJ 148.* The Doctrine of equitable estoppel or promissory estoppel is considered and is explained in this reported case. Facts of this reported case are different from that of the present one.

43. The argument advanced by learned advocate of the Party I appears to be more in enthusiasm rather than in merits. The technical staff and administrative/ /ministerial staff to whom benefits of S1, S2 and S3 pay scales are extended, are neither the parties to nor they have accepted the settlement dated 6-9-2002 (Exb. 25). As per provision contained in Section 115 of the Indian Evidence Act, 1872 principal of estoppel comes into operation when one person has by his declaration act or omission intentionally caused or permitted another person to believe a thing to be true and to act upon such believe neither he nor his representative shall be allowed in any suit or proceeding between himself and such person, to deny the truth of that thing. Estoppel is a rule of exclusion. It precludes a party or its privy from denying a fact which was represented to another who acted on it to his detriment. There is no sufficient and convincing evidence to show that such assurance was given by the Party II and because of such assurance the Party I employees accepted the memorandum of settlement dated 6-9-2002 (Exb. 25). It reveals from declaration (Exb. 26) that the Party I employees have voluntarily accepted this settlement. I, therefore, do not agree with argument advanced by learned advocate of the Party I.

44. Learned advocate of the Party I further argued that the Party I employees have accepted the settlement dated 6-9-2002 (Exb. 25) under declarations dated 7-9-2002. Clause No. 14.4 included in this settlement and of which reference is made by learned advocate of the Party II is not binding upon the Party I employees. Therefore, according to him, the said clause No. 14.4 will not come in the way of the Party I employees in claiming additional benefits available under report of the said committee. He relied upon decision given by the Hon'ble High Court of Judicature at Bombay in case of *Bennett Coleman & Co. Ltd., and another, Petitioners, v/s Narayan Atmaram Sawant and others, Respondents,* reported in II *2002 II CLR 335.*

45. It appears from facts of the reported case of *Bennett Coleman & Company Limited and another* referred to above that there was a bilateral settlement between the said Union and the petitioner company under Section 18(1) read with Section 2(p) of the said Act, 1947 and Rule 62 of the Industrial Disputes (Bombay) Rules. Service conditions of the employees were governed by the said settlement and the same was binding on all the employees and also the petitioner company. The grievance of respondent Nos. 1 to 10 employees was that the petitioner company had not given benefits of the said settlement to them. It was also their grievance that the petitioner company was insisting on them to sign a declaration as prescribed in the clause 20 of the said settlement read with clause 22 and the form of declaration. According to the said employees they were entitled to get the benefits of the settlement without any declaration as prescribed in the said settlement. Clause 20 was providing that such of the employees who gives declaration a specimen of which is attached hereto and marked annexure 'A' duly signed in duplicate shall only be eligible to receive benefits under this settlement, and that, such declaration shall have to file with the company and the Sabha on or before 31-1-1990. Clause 21 was stating the consequence

of failure to sign declaration under clause 20 was to deny the benefits under settlement to the extent of additional one increment for service of 15 years and more and further to deny the benefits under several other clauses mentioned in this clause. By virtue of the clause 21 it was made compulsory for every workman to sign such a declaration to get the benefits of the settlement. The Hon'ble High Court of Bombay held that the declaration as prescribed in clause 20 is totally redundant and irrelevant, that, it is not at all necessary for an employee or a workman to sign such declaration, that, he is bound by settlement and that even in the absence of such declaration he is bound by such settlement between the employer and the recognised union whether he is a member of the recognised union or not.

46. Facts of the above reported case of *Bennett Coleman and Co. Ltd., and another* are totally different from those of the present one. With respect, I am of the opinion that decision from this reported case is not applicable to hold that the Clause No. 14.4 stated in the settlement dated 6-9-2002 (Exb. 25) is not binding upon the Party I employees. Once the Party I employees have accepted this settlement, the acceptance is not only of the monetary benefits but also of all the terms and conditions stated therein. They cannot approbate and reprobate at one and the same time. The argument advance by learned advocate of the Party I is devoid of merits and as such it must fall to the ground.

47. Learned advocate of the Party I further argued that benefits which are available under report of the said committee are more than those which the Party I employees are receiving under the settlement dated 6-9-2002 (Exb. 25). The Party II after this settlement has extended benefits of S1, S2 and S3 pay scales only to the technical staff and administrative/ministerial staff even though there was parity of pay scales between these two staffs and the Party I employees/storekeepers. It follows that there is a material change in working condition of the employees since the time of settlement (Exb. 25). Therefore, according to him, the Party I employees are entitled to raise demand of benefits available under report of the said committee even during validity period of the settlement dated 6-9-2002 (Exb. 25). To substantiate his argument he relied upon decision given by the Hon'ble Supreme Court in case of *M/s. National Textile Corporation (APKKM) Ltd., Appellant V. Sree Yellamma Cotton, Woolen and Silk Mills Staff Association Respondent Reported in AIR. 2001 Supreme Court 652.*

48. The Hon'ble Supreme Court held in the reported case of *M/s. National Textile Corporation* referred to above that reference of dispute during subsistence of settlement is tenable in view of material change in working conditions of employees since the time settlement is entered into. It appears from facts of this reported case that in the original settlement between parties there has been no provision of working the mills all seven days in a week nor was any provision made in regard higher emolument applicable to either class of workmen. The Labour Court noticed that a gardener who had been categorized as a member of the staff coming under category two i.e. ministerial staff could get less emoluments than his helper who comes under category three i.e. workmen and therefore in those special circumstances in view of the change in the working conditions, it is held, that the labour court in a reference can give relief to the employees coming under second category ministerial staff but from a date on the expiry on the agreed settlement entered into by the parties.

49. In the present case there is material change in working conditions of the non-unionized supervisory staff covered by the said committee under its report. These working conditions mainly relate to monetary benefits. The Party II has extended to the technical and administrative staff, benefits of S1, S2 and S3 pay scales recommended by the said committee for non-unionized supervisory staff. The technical staff and administrative staff are not covered by the said committee under its report. The Party I employees are getting benefits as per settlement dated 6-9-2002 (Exb. 25). They are also not covered by the report of the said committee. There is question as to whether they are entitled to get the monetary benefits under report of the said committee at par with the technical staff and administrative staff. There is no material change in working conditions of the Party I employees. With respect, I am of the opinion that, decision relied upon by the learned advocate of the Party I from the reported case of *National Textile Corporation* is not helpful to substantiate his argument that even during validity period of the settlement dated 6-9-2002 (Exb. 25) the Party I employees are entitled to raise dispute and to make additional demand. I am unable to be in agreement with argument advanced by him.

50. Validity period of the settlement dated 6-9-2002 (Exb. 25) is from 1-4-1998 to 31-12-2006 which comes to be of eight years and nine months. Decision given by the Hon'ble Supreme Court in case of *M/s. Tata Chemicals Ltd., appellant v/s the workmen employed under M/s. Tata Chemical Ltd., respondents, reported in AIR 1978 Supreme Court 828* and which is placed before me by learned advocate of Party I also speaks that a settlement arrived at by agreement between the employer and the workman otherwise than in the course of conciliation proceeding is binding on the parties to the agreement. Since the memorandum of settlement dated 6-9-2002 (Exb. 25) accepted by the Party I employee is binding upon them, I hold that, pursuant to clause 14.4 stated in this memorandum of settlement, they are barred from receiving benefits under report of the said committee, but only for the validity period that is from 1-4-98 to 31-12-2006. I answer the issue accordingly.

51. *Issue No. 4:* It appears from affidavit filed by the employee V. D. Honavarkar in evidence (Exb. 23) that there was historical parity in the pay scales of the

technical staff, administrative/ministerial staff and of the storekeepers before extension of benefits of S1, S2 and S3 pay scales to the technical staff and to the administrative/ministerial staff. The Party II extended benefits of S1, S2 and S3 pay scales recommended by the said committee under its report for non-unionized supervisors. Such benefits are not extended by the Party II to the storekeepers, that is, to the said employees represented by the Party I/Association. Thus the Party I employees are discriminated by the Party II in the matter of extension of benefits of the said committee's report. Argument advanced by learned advocate of the Party I is on the same line.

52. The Party II establishment under its letter dated 12-7-2005 of which xerox copy is produced at Exb. 156 has refused to extend benefits of recommendations made by the said committee under its report only on the ground that the settlement 6-9-2002 (Exb. 25) signed by them under the aegis of Shipyard Employees Union (Goa) will not be not re-opened or amended or foreclosed during its period of validity that its to say till 31st of December, 2006. It is proved that because of acceptance of settlement dated 6-9-2002 (Exb. 25) the Party I employees are barred from receiving benefits under the Justice Mohan Committee for the period of the settlement that is from 1-4-1998 till 31st December, 2006. The Party II establishment has rightly refused to extend benefits of the Justice Mohan Committee Report to the Party I employees on the ground stated in its letter dated 12-7-2005 (Exb. 156). It cannot be said that by refusing to extend such benefits to the Party I employees during validity period of the settlement dated 6-9-2002 (Exb. 25) the Party II has discriminated the Party I employees in the matter of extension of benefits of the Justice Mohan Committee Report. I, therefore, do not agree with the case made out by the Party I employees and also with argument advanced by their learned advocate. My answer to the issue is in the negative.

53. *Issue No. 5:* Learned advocate of Party I argued alternatively that the Party II under its letter dated 12-7-2005 (Exb. 156) has refused to extend benefits of Justice Mohan Committee Report to the Party I Employees only on the ground that the settlement dated 6-9-2002 (Exb. 25) cannot be re-opened during its validity period. The validity period of the settlement dated 6-9-2002 (Exb. 25) which was from 1-4-1998 till 31-12-2006 is over.

54. Recommendations made by the said committee remain operative and in force till new wage settlement is arrived at. Therefore, according to him, the Party I employees are entitled to benefits under report submitted by the said committee with effect from 1-1-2007 mainly on the grounds that there was historical parity of pay scale between technical staff and administrative staff to whom benefits of report of the said committee are extended and of the Party I employees who are the storekeepers.

55. The Party I employees are admittedly workmen within meaning of Section 2(s) of the said Act, 1947. They are claiming benefits of SI, S2 and S3 pay scales which are recommended under report of the said committee for and which are extended by the Party II to non-unionized supervisory staff under Memo No. 82 dated 30-11-2001 (Exb. 121). If benefits of SI, S2 and S3 pay scales are extended to the Party I employees that will amount in extending to the Party I employees the benefits extended to the supervisory staff. Under this circumstance, question may arise as to whether the Industrial Tribunal can extend such benefits to the Party I employees if they are entitled to such benefits after validity period of the settlement dated 6-9-2002 (Exb. 25) is over. In this connection, I can do no better than to have reference of decision given by the Hon'ble Supreme Court in case of *the Workmen employed by the Greaves Cotton & Co. Ltd., Etc., Appellants v. Greaves Cotton & Co. Ltd., etc., Respondents reported in A.I.R. 1972 Supreme Court 319.* This decision is placed before me by learned advocate of Party I. Question which had arisen for consideration of the Hon'ble Supreme Court in this reported case was whether the supervisors getting less than Rs. 500/- per month on the crucial date which is the date of reference can arise the dispute for wages taking them beyond Rs. 500/- and whether workmen can raise a dispute about non-workmen. The Hon'ble Supreme Court held in this reported case that–

> *"Once a Tribunal is vested with the jurisdiction to entertain the dispute which is validly referred, it does not cease to continue that jurisdiction merely because the claim made goes beyond the wage which takes workmen out of that category and made them non-workmen. What has to be seen is whether on the date of the reference there was any dispute in respect of the workmen which could be referred under the Act to the Tribunal".*

56. The dispute under the present reference is validly referred to this Industrial Tribunal for adjudication. On the date of reference there was dispute in respect of the Party I employees/workmen under the said Act, 1947. Therefore, an relying upon the above decision quoted from the reported case of *the workmen employed by the Greaves Cotton and Co. Ltd., etc.,* I Hold that if the Party I employees are entitled to the benefits of pay scales S1, S2 and S3, such benefits can be extended to them with effect from 1-1-1007 that is after the validity period of the settlement dated 6-9-2002 (Exb. 25) is over.

57. Learned advocate of the Party I in support of his argument that the Party I employees are entitled to S1, S2 and S3 pay scales on ground of parity in the pay scales, relied upon decision given by the Hon'ble Supreme Court in case of *State of Bihar and others, appellants v/s Bihar State Workshop Superintendents Federation and others, respondents reported in 1993 supp (2) Supreme Court cases 368.* It appears from facts of this reported case that one Baijnath Gupta who was workshop superintendent at one of the Government Polytechnic Institutes had filed Writ Petition claiming

interalia that he being a teaching employee was entitled to U.G.C. pay scale. The said Writ Petition was allowed in part and thereafter he filed Letters Patent Appeal No. 30/1987 before the Division Bench of the High Court. The High Court decided the said Letters Patent Appeal by order dated 19-1-1990 and held that the appellant Baijnath Gupta was a teaching employee of Government Polytechnic and the State Government had decided to implement U.G.C. pay scale to the teaching employees of Polytechnics and Engineering Colleges, and as such, the appellant's case was on par with them. The High Court also placed reliance in this regard on the earlier two decisions of that court and held that the appellant was entitled to U.G.C. pay scale, i.e. Rs. 1,200-1,900 with effect from April 1, 1973. Representations were filed by Bihar State Workshop Superintendents Federation before the State Government to grant U.G.C. scale with effect from April 1, 1973 and other consequential benefits. The State Government by order dated April 8, 1991 rejected the representations. Some of the workshop superintendents individually as well as the Bihar State Workshop Superintendents Federation filed Writ Petitions in the High Court claiming the U.G.C. scale. All those Writ Petitions came to be allowed by the High Court. Order of Government dated April 8, 1991 rejecting representations is quashed. Therefore, the State of Bihar against orders of the High Court filed appeals in the Hon'ble Supreme Court. All India Council for Technical Education as well as all other authorities treated these post of workshop superintendents as teaching post and granted pay scale equivalent to associate professors. Diploma in engineering with eight years experience or degree in engineering with five years experience was prescribed as educational qualification for such post. The respondents were from a dying cadre.

58. Learned advocate of the Party II pointed out that decision given by the Hon'ble Supreme Court in the reported case of *State of Bihar and others* referred to above is not applicable to the present case because facts of these two cases are different from each other.

59. Question which arose for consideration of the Hon'ble Supreme Court was whether the respondents who were who were workshop superintendents in the various engineering colleges or the Government Polytechnics under the State Government were entitled to U.G.C. scales of pay. The Hon'ble Supreme Court held that -

> *"in view of the historical background and the terms and conditions of the services and pay scales remaining applicable to the respondents for a considerable long period of time in order to do completed justice, respondents are entitled to the revised pay scales allowed to asstt. Professor (Senior Scale)".*

60. Learned advocate of the Party II to counter argument advanced by learned advocate of the Party I argued that decision from the reported case of the State of Bihar and others referred to above is not applicable to the present case because recruitment rules, promotion policy, job performance and scale at entry level pertaining to categories of technical staff, administrative/ /ministerial staff and storekeepers are different from each other. Not only that, there is also no parity in pay scales of the employees working in these categories. He further pointed out that work of the Party I employees and that of technical staff and of administrative staff is not on equal footing. Therefore, according to him, the Party I employees are not entitled to claim benefits under the Justice Mohan Committee Report. He relied upon decision given by the Hon'ble Supreme Court in case of *Federation of All India Customs and Central Excise Stenographers and others, and Union of India and others reported in 1988 (57) FLR 258.* The Hon'ble Supreme Court held in this reported case that equal pay for equal work is a fundamental right and that it depends upon nature of the work done. With respect I am of the opinion that, this decision is not applicable to the present case only for simple reason that in the present case the Party I employees have claimed benefits of S1, S2 and S3 pay scales on the ground of parity in pay scales.

61. Learned advocate of the Party I submitted that the grounds which are pressed into service by learned advocate of the Party II are supplementary to reason stated in letter dated 12-7-2005 (Exb. 156) whereunder the Party II has refused to extend to the Party I employees benefits of recommendation made by the said committee. Such type of supplementary grounds, according to him, should not be taken into consideration. In this connection, he relied upon observations made by the Hon'ble Supreme Court in para No. 8 of judgment in case of *Mohinder Singh Gill and another, appellants v/s The Chief Election Commissioner, New Delhi and others, Respondents reported in (1978) I. Supreme Court Cases 405.* These observations are–

> *"The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to Court on account of a challenge, get validated by additional grounds later brought out".*

62. The employee V. D. Honavarkar admitted in para No. 192 of his cross examination that, nature of the duties performed by the employees who are members of the Party I/Association are different from the duties performed by Planning and Design Staff, Yard Supervisors and Administrative Staff. Categories of these employees are also pointer of fact that, nature of the duties performed by the employees working in one of the categories is different from those of others. The letter dated 12-7-2005 (Exb. 156) which is in the nature of order whereunder extension of benefits of recommendation made by Justice Mohan Committee is refused to the Party I employees is issued by the Party II which is Government of India undertaking and which is a

statutory body registered under the Indian Companies Act, 1956. Even for the sake of argument assuming that recruitment rules, promotion policy and scale at entry level applicable to the Party I employees are different from those which are applicable to the employees working in technical and administrative/ministerial section, these grounds are not shown as reason in the letter dated 12-7-2005 (Exb. 157) to refuse extension to the Party I employees benefits of Justice Mohan Committee Report. The reason mentioned in the letter (Exb. 157) is supplemented by fresh grounds pressed into service by learned advocate of the Party II. Therefore, and relying upon the above observations made by the Hon'ble Supreme Court in the reported case of *Mohinder Singh,* I do not take into consideration the grounds pressed into service by learned advocate of the Party II. I do not agree with argument advanced by him.

63. Learned advocate of the Party I in support of his argument that the Party I employees are entitled to benefits of S2 and S3 pay scales relied upon "Document Manager" of which xerox copy is produced at Exb. 145. The then General Manager (Commercial) working in establishment of the Party II has strongly recommended under this document to extend to the storekeepers also, pay scales recommended by Justice Mohan Committee. What is recommended by the General Manager under this document is not accepted by the management of the Party II. Under this circumstance, I hold that it will not be proper and correct to place reliance upon such document.

64. The Goa Shipyard Technical Staff Association had instituted Writ Petition bearing No. 272/2002 against the Party II and Union of India in the Hon'ble High Court of Bombay at Goa on 27th of August, 2002. Xerox copy of the Writ Petition is at Exb. 151. One of the prayer made by the Goa Shipyard Technical Staff Association in this Writ Petition was for direction to the Goa Shipyard to extend and to raise pay scale S2, S3 and S4 to the members of the Association and which are recommended by Justice Mohan Committee. Srinivas Samavedam who is working as Chief Manager (Personnel) in establishment of the Party II admitted in para No. 94 of his cross examination that it was contention of the Goa Shipyard, that is, the present Party II in the Writ Petition No. 272/ /202 that the technical staff association is not entitled to S1, S2 and S3 pay scale because the said staff was not performing duties of supervisory nature. He further pointed out that it was also contention in that Writ Petition by the present Party II that the said staff was not non-unionized supervisory staff and therefore also the said staff was not entitled to S1, S2 and S3 pay scale.

65. There was reference bearing No. IT/67/2003 in this Industrial Tribunal at the instance of the Goa Shipyard Administrative Staff Association. Xerox copy of the Official Gazette dated 9-3-2006 in which Award passed in this reference bearing No. IT/67/2003, is produced at Exb. 176. This Award is in pursuance of settlement dated 31-3-2005 which is entered into by and between the parties to the reference. Thereafter the Party II under Memo No. 31 dated 2-4-2005 of which xerox copy is produced at Exb. 149, extended S1, S2 and S3 pay scales to the eligible ministerial staff.

66. If the Memo No. 82 dated 30-11-2001 (Exb. 121) and Memo No. 41 dated 26-6-2003 (Exb. 122) whereunder the Party II extended benefits of S3, S2 and S1 pay scales to the non-unionized supervisory staff and to the technical staff which admittedly includes planning, design repairs and apprentice, instructor, and supervisory with effect from 1-4-1998 respectively are read together it becomes crystal clear therefrom that the existing scales of Rs. 2725-70-37-75-80-3875-(9), of Rs. 2630-55-2905-70-3805-(8), and of Rs. 2570-50-2820- -60-2420-(7) are the same to which corresponding new scales of Rs. 6000-160-7200-S3, of Rs. 5600-150-8600-S2 and of Rs. 5200-140-8000-S1 are made applicable. This will certainly go to show that the new pay scales S3, S2 and S1 which are extended to the non-unionized supervisory staff are also extended to the technical staff which was getting the same existing pay scale of code Nos. (9), (8) and (7) respectively. It is pertinent to note that, though there was contention of the Party II in the Writ Petition bearing No. 272/2002 that the Technical Staff Association is not entitled to S1, S2 and S3 pay scale because the said staff was not performing duties of supervisory nature, even then S1, S2 and S3 pay scales are extended to the technical staff under memo No. 41 dated 26-6-2003 (Exb. 122).

67. It appear from Memo No. 31 dated 2-4-2005 (Exb. 149) that S3 and S2 pay scales are made applicable to the eligible ministerial staff which was getting existing pay scale bearing pay codes No. (14) and (13) respectively which are substantially similar to the pay scales of code Nos. (9) and (8) which were the existing pay scales of non-unionized supervisory staff and of the technical staff.

68. The Party I employees are placed in the pay scales of Sr. Nos. (8) and (9) under the settlement dated 6-9-2002 (Exb. 25). Pay scale of Sr. No. 8 is Rs. 2630- -55-2905-70-3605. Pay scale of Sr. No. (9) is Rs. 2725-70- -3075-80-3895. These two pay scales of Sr. Nos. (8) and (9) are substantially similar to the existing pay scales bearing pay codes numbers (9) and (8) respectively which the non-unionized supervisory staff, and technical staff, were getting at the time of extending benefits of S1, S2 and S3 pay scales to them. This will certainly lead to logical conclusion that except some minor differences there was parity in pay scales of the non-unionized supervisory staff, technical staff, administrative staff, managerial staff and the storekeepers. When the Party II has extended benefits of S1, S2 and S3 pay scales to the technical staff and especially to the administrative/ /ministerial staff, even though their pay scale was substantially similar to that of the non-unionized supervisory staff and even though their duties are different from those of the non-unionized supervisory staff, I do not find any cogent reason to keep away the Party I employees who are the storekeepers from the benefits of S2 and S3 pay scales recommended by the

said committee for the non-unionized supervisory staff. Interest of Justice demands that the Party I employees should be extended benefits of S2 and S3 pay scales with consequential benefits but only with effect from 1-1-2007, that is, after the validity period of the settlement dated 6-9-2005 (Exb. 25) came to an end. I answer the issue accordingly.

69. As a result of finding given to issues No. 3 and 4, it will have to be adjudicated that acceptance of the benefits of settlement dated 6-9-2002 bars the workmen represented by the Goa Shipyard Storekeepers Association, Vasco-da-Gama from receiving benefits under the Justice Mohan Committee Report with effect from 1-4-1998, but only for the validity period of the settlement dated 6-9-2002, that is, till 31-12-2006, and that, the workmen who are storekeepers are not discriminated in the matter of extension of benefits of the Justice Mohan Committee Report. However, as a result of finding given to the issue No. 5, I hold that the Party I employees are entitled with effect from 1-1-2007 to the benefits of S2 and S3 pay scales with consequential benefits. These two pay scales are recommended by the said committee for non-unionized supervisory staff. Therefore, benefits of S2 and S3 pay scales will have to be extended to the Party I employees only if they make declarations in writing declaring themselves as non-unionized supervisors. With this, I proceed to adjudicate the reference by passing order as follows:

ORDER

1. It is hereby adjudicated that the acceptance of the benefits of settlement dated 06-09-2002, bars the workmen represented by the Goa Shipyard Storekeepers Association, Vasco-da-Gama, from receiving benefits under Justice Mohan Committee Report with effect from 01-04-1998, but during validity period of the settlement dated 6-9-2002, that is, till 31-12-2006.
2. It is hereby adjudicated that the workmen who are storekeepers are not discriminated is the matter of extension of benefits of the Justice Mohan Committee Report.
3. The Party I employees are entitled with effect from 1-1-2007 to the benefits of S2 and S3 pay scales with consequential benefits recommended under the Justice Mohan Committee Report, if they make declarations in writing declaring themselves as non-unionized supervisors.
4. No order as to costs.
5. The Award be submitted to the Government of Goa as per provisions contained in Section 15 of the Industrial Disputes Act, 1947.

Sd/-
(Dilip K. Gaikwad),
Presiding Officer,
Industrial Tribunal-cum-
-Labour Court-I.

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